

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE SIERRA CLUB,

*Plaintiff,*

v.

GENON POWER MIDWEST LP,

*Defendant.*

Civil Action No. 2:19-cv-01284-WSS

Hon. William S. Stickman IV

**ORDER OF COURT**

AND NOW, this 29th day of April 2020, IT IS HEREBY **ORDERED** that Defendant Genon Power Midwest LP's ("GPM's") Motion for Judgment on the Pleadings (ECF No. 16) is **DENIED**. Rule 12(c) provides that "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." FED. R. CIV. P. 12(c). Judgment is granted if there are no issues of material fact and a movant is entitled to judgment as a matter of law. *Sherzer v. Homestar Mortg. Serv. 's*, 707 F.3d 255, 257 (3d Cir. 2013) (citing *Allstate Prop. & Cas. Ins. v. Squires*, 667 F.3d 388, 390 (3d Cir. 2012)). Whether GPM is violating the rate-of-change provision (Part C.I.F.) of its National Pollution Discharge Elimination System ("NPDES") permit or is protected by a mixing zone or thermal variance implicates issues of material fact. The Court cannot, at this time, determine that GPM is entitled to judgment as a matter of law. The Court will allow the case to proceed in due course and allow the parties to develop a full and complete record. The Court may revisit the issues addressed in this Motion if they are contested at summary judgment.

  
WILLIAM S. STICKMAN IV  
UNITED STATES DISTRICT JUDGE